

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

WSOU INVESTMENTS, LLC d/b/a
BRAZOS LICENSING AND
DEVELOPMENT,

Plaintiff,

v.

MICROSOFT CORPORATION

Defendant.

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CIVIL ACTION NO. 6:20-cv-465

JURY TRIAL DEMANDED

**ORIGINAL COMPLAINT FOR PATENT
INFRINGEMENT**

Plaintiff WSOU Investments, LLC d/b/a Brazos Licensing and Development (“Brazos” or “Plaintiff”), by and through its attorneys, files this Complaint for Patent Infringement against Microsoft Corporation (“Microsoft” or “Defendant”) and alleges:

NATURE OF THE ACTION

1. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, et seq., including §§ 271, 281, 284, and 285.

THE PARTIES

2. Brazos is a limited liability corporation organized and existing under the laws of Delaware, with its principal place of business at 605 Austin Avenue, Suite 6, Waco, Texas 76701.

3. On information and belief, Defendant Microsoft Corporation is incorporated under the laws of Washington State with its principal place of business at 1 Microsoft Way, Redmond, Washington 98052. Microsoft may be served with process through its registered agent Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701.

4. On information and belief, Microsoft has been registered to do business in the state of Texas under Texas SOS file number 0010404606 since about March 1987.

5. On information and belief, Microsoft has had regular and established places of business in this judicial district since at least 2002.

JURISDICTION AND VENUE

6. This is an action for patent infringement which arises under the Patent Laws of the United States, in particular, 35 U.S.C. §§ 271, 281, 284, and 285.

7. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has specific and general personal jurisdiction over Microsoft pursuant to due process and/or the Texas Long Arm Statute, because Microsoft has committed acts giving rise to this action within Texas and within this judicial district. The Court's exercise of jurisdiction over Microsoft would not offend traditional notions of fair play and substantial justice because Microsoft has established minimum contacts with the forum. For example, on information and belief, Microsoft has committed acts of infringement in this judicial district, by among other things, selling and offering for sale products that infringe the asserted patent, directly or through intermediaries, as alleged herein.

9. Venue in the Western District of Texas is proper pursuant to 28 U.S.C. §§1391 and/or 1400(b).

10. This district was deemed to be a proper venue for patent cases against Microsoft in actions bearing docket numbers: 6-19-cv-00572 (*Zeroclick, LLC v. Microsoft Corporation*); 6-19-cv-00687 (*Exafer, Ltd. v. Microsoft Corporation.*); and 6-19-cv-00399 (*Neodron Ltd. v. Microsoft Corporation*).

11. On information and belief, Microsoft maintains a variety of regular and established business locations in the judicial district including its Corporate Sales Office Locations, Retail Store Locations, and Datacenter Locations.

12. On information and belief, Microsoft operates multiple corporate sales offices in the judicial district, and these offices constitute regular and established places of business.

13. On information and belief, Microsoft employs hundreds of employees within its corporate sales offices located in the judicial district.

14. On information and belief, Microsoft has an established place of business in this judicial district known as “Corporate Sales Office: Austin” located at 10900 Stonelake Boulevard, Suite 225, Austin, Texas 78759 and “Microsoft Retail Store: The Domain” located at 3309 Esperanza Crossing, Suite 104 Austin, Texas 78758.

Microsoft U.S. office locations

Microsoft reaches customers at sales offices, support centers and technology centers throughout the country. Use the clickable map or the location links for more information.

OR
All ▾

<p>1. Corporate Sales Office: Austin</p> <p>10900 Stonelake Boulevard, Suite 225 Austin, TX, USA 78759</p> <p>View directions</p>	1.18 mi
<p>2. Microsoft Retail Store: The Domain</p> <p>3309 Esperanza Crossing, Suite 104 Austin, TX, USA 78758</p> <p>View directions</p>	1.79 mi

<https://www.microsoft.com/en-us/about/officelocator?Location=78759>

15. On information and belief, Microsoft's "Corporate Sales Office: Austin" and "Microsoft Retail Store: The Domain" locations were respectively assessed by the Travis County Appraisal District in 2019 to have market values of over \$2.3 million dollars and \$2.7 million dollars.

Travis CAD							
Property Search Results > 1 - 18 of 18 for Year 2019							
Click the "Details" or "Map" link to view more information about the property or click the checkbox next to each property and click "View Selected on Map" to view the properties on a single map.							
Property ID	Geographic ID	Type	Property Address	Owner Name	DBA Name	Appraised Value	
434688		Personal	10900 STONELAKE BLVD B-225 AUSTIN, TX 78759	MICROSOFT CORPORATION	MICROSOFT CORPORATION	\$2,300,856	View Details
818154		Personal	3309 ESPERANZA CROSSING 104 AUSTIN, TX 78758	MICROSOFT CORPORATION	MICROSOFT CORPORATION STORE #11	\$2,702,083	View Details
846391		Personal	12812 SHOPS PARKWAY 300 TX 78738	MICROSOFT CORPORATION	MICROSOFT CORPORATION	\$205	View Details
846393		Personal	907 W 5 ST 101 TX 78703	MICROSOFT CORPORATION	MICROSOFT CORPORATION	\$423	View Details
846400		Personal	9600 S INTERSTATE HWY 35 TX 78748	MICROSOFT CORPORATION	MICROSOFT CORPORATION	\$276	View Details
846401		Personal	1201 BARBARA JORDAN BLVD 3-700 TX 78723	MICROSOFT CORPORATION	MICROSOFT CORPORATION	\$26,744	View Details

<http://propaccess.traviscad.org/clientdb/SearchResults.aspx>

16. On information and belief, Microsoft has another established place of business in this judicial district known as "Corporate Sales Office: San Antonio" located at Concord Park II, 401 East Sonterra Boulevard, Suite 300, San Antonio, Texas 78258.



Source: Google Maps

17. On information and belief, Microsoft owns and operates multiple datacenters in the judicial district, including without limitation data centers located at 5150 Rogers Road, San Antonio, Texas 78251; 5200 Rogers Road, San Antonio, Texas 78251; 3823 Weisman Boulevard, San Antonio, Texas 78251; and 15000 Lambda Drive, San Antonio, Texas 782245.

18. On information and belief, Microsoft utilizes its datacenter locations in this judicial district as regular and established places of business. As a non-limiting example, the data centers in San Antonio are referred to within Microsoft as “US Gov Texas.”

19. On information and belief, thousands of customers who rely on the infringing datacenter infrastructure that Microsoft’s engineering and operations teams have built, reside in this judicial district.

COUNT ONE - INFRINGEMENT OF
U.S. PATENT NO. 8,274,902

20. Brazos re-alleges and incorporates by reference the preceding paragraphs of this Complaint.

21. On September 25, 2012, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,274,902 (“the ’902 Patent”), entitled “Estimation Method for Loss Rates in a Packetized Network.” A true and correct copy of the ’902 Patent is attached as Exhibit A to this Complaint.

22. Brazos is the owner of all rights, title, and interest in and to the ’902 Patent, including the right to assert all causes of action arising under the ’902 Patent and the right to any remedies for the infringement of the ’902 Patent.

23. Microsoft makes, uses, sells, offers for sale, imports, and/or distributes in the United States, including within this judicial district, products such as, but not limited to, network monitoring products, including Network Performance Monitor (NPM) in Azure (collectively, the “Accused Products”).

24. Microsoft Azure is a cloud computing service for building, testing, deploying, and managing applications and services through Microsoft-managed data centers. The Azure portal helps users to manage Azure services.

What is Azure?

Azure is a complete cloud platform that can host your existing applications and streamline new application development. Azure can even enhance on-premises applications. Azure integrates the cloud services that you need to develop, test, deploy, and manage your applications, all while taking advantage of the efficiencies of cloud computing.

By hosting your applications in Azure, you can start small and easily scale your application as your customer demand grows. Azure also offers the reliability that’s needed for high-availability applications, even including failover between different regions. The [Azure portal](#) lets you easily manage all your Azure services. You can also manage your services programmatically by using service-specific APIs and templates.

<https://docs.microsoft.com/en-us/azure/guides/developer/azure-developer-guide>

25. The Accused Products offer a variety of solutions to monitor networking assets in Azure and in hybrid environments comprising Azure and on-premises equipment. The Accused Products have solutions and utilities to monitor network connectivity, the health of ExpressRoute circuits, and analyze network traffic in the cloud.

Azure offers a host of solutions to monitor your networking assets. Azure has solutions and utilities to monitor network connectivity, the health of ExpressRoute circuits, and analyze network traffic in the cloud.

<https://docs.microsoft.com/en-us/azure/networking/network-monitoring-overview>

<https://docs.microsoft.com/en-us/azure/azure-monitor/insights/network-performance-monitor-faq>

Network Performance Monitor (NPM) is a suite of capabilities, each of which is geared towards monitoring the health of your network, network connectivity to your applications, and provides insights into the performance of your network. NPM is cloud-based and provides a hybrid network monitoring solution that monitors connectivity between:

- Cloud deployments and on-premises locations
- Multiple data centers and branch offices
- Mission critical multi-tier applications/micro-services
- User locations and web-based applications (HTTP/HTTPS)

Performance Monitor, ExpressRoute Monitor, and Service Connectivity Monitor are monitoring capabilities within NPM and are described below.

<https://docs.microsoft.com/en-us/azure/networking/network-monitoring-overview>

26. A user of the Accused Products can monitor network connectivity across cloud deployments and on-premises locations, multiple data centers, etc. and can determine the infrastructure in the path, such as intermediate branching nodes and response time of the service.

Network Performance Monitor offers three broad capabilities:

- [Performance Monitor](#): You can monitor network connectivity across cloud deployments and on-premises locations, multiple data centers, and branch offices and mission-critical multitier applications or microservices. With Performance Monitor, you can detect network issues before users complain.
- [Service Connectivity Monitor](#): You can monitor the connectivity from your users to the services you care about, determine what infrastructure is in the path, and identify where network bottlenecks occur. You can know about outages before your users, and see the exact location of the issues along your network path.

This capability helps you perform tests based on HTTP, HTTPS, TCP, and ICMP to monitor in near real time or historically the availability and response time of your service. You also can monitor the contribution of the network in packet loss and latency. With a network topology map, you can isolate network slowdowns. You can identify problem spots that occur along the network path from the node to the service, with latency data on each hop. With built-in tests, you can monitor network connectivity to Office 365 and Dynamics CRM without any preconfiguration. With this capability, you can monitor network connectivity to any TCP-capable endpoint, such as websites, SaaS applications, PaaS applications, and SQL databases.

- [ExpressRoute Monitor](#): Monitor end-to-end connectivity and performance between your branch offices and Azure, over Azure ExpressRoute.

<https://docs.microsoft.com/en-us/azure/azure-monitor/insights/network-performance-monitor>

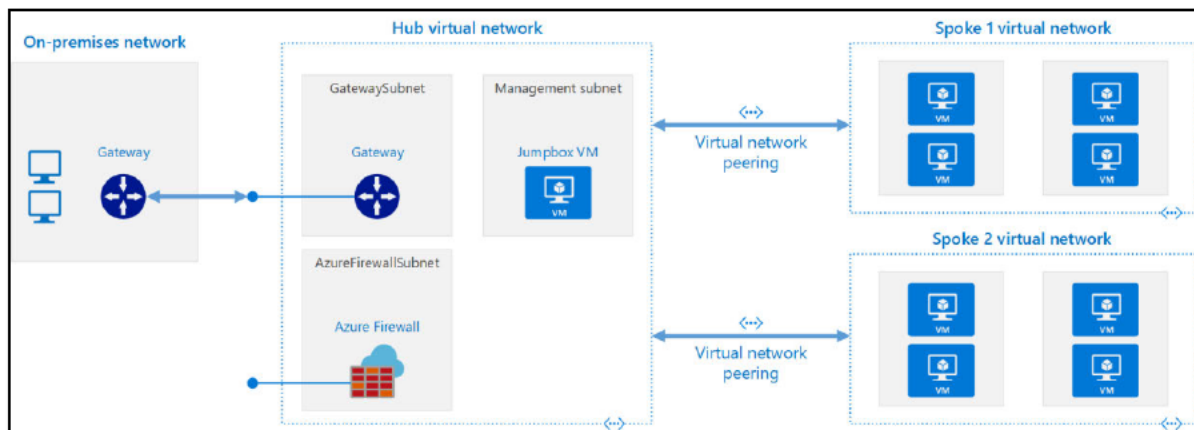
27. The Accused Products include Performance Monitor (PM). PM provides network monitoring for cloud, hybrid, and on-premises environments. A user can monitor network connectivity across remote branch and field offices, store locations, data centers, and clouds.

Performance Monitor is part of NPM and is network monitoring for cloud, hybrid, and on-premises environments. You can monitor network connectivity across remote branch and field offices, store locations, data centers, and clouds. You can detect network issues before your users complain. The key advantages are:

- Monitor loss and latency across various subnets and set alerts
- Monitor all paths (including redundant paths) on the network
- Troubleshoot transient and point-in-time network issues, that are difficult to replicate
- Determine the specific segment on the network, that is responsible for degraded performance
- Monitor the health of the network, without the need for SNMP

<https://docs.microsoft.com/en-us/azure/networking/network-monitoring-overview>

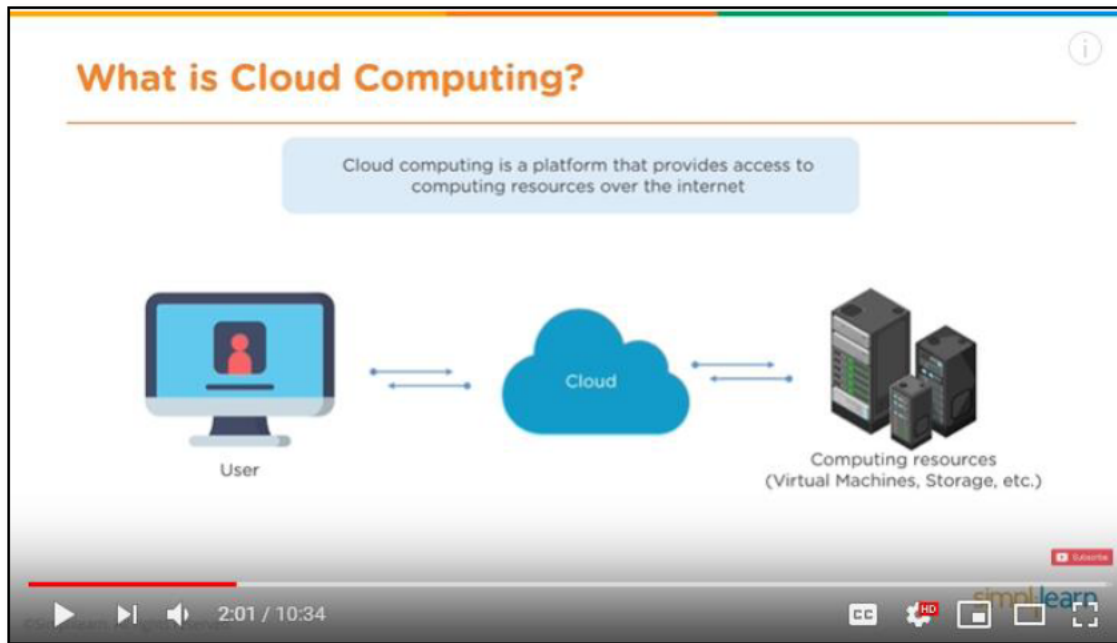
28. A reference architecture of an implementation of a Hub-Spoke Network topology in Azure is shown below. Here, Virtual Machines (VMs) act as endpoints.



<https://docs.microsoft.com/en-us/azure/architecture/reference-architectures/hybrid-networking/hub-spoke>

29. The Accused Products are a cloud-based platform and thereby act as a collection point to collect the performance data to show network connectivity and report data to the user.

Therefore, the network branches from the Accused Product to a plurality of downstream end nodes (here, VMs, for example).



<https://www.youtube.com/watch?v=3Arj5zlUPG4>

30. Users of the Accused Products can monitor the connectivity, determine what infrastructure is in the path, and identify where network bottlenecks occur. Further, service connectivity helps to monitor end-to-end connectivity to applications and determines network latency and packet loss in the network.

With Service Connectivity monitoring, you can now test reachability of applications and detect performance bottlenecks across on-premises, carrier networks and cloud/private data centers.

- Monitor end-to-end network connectivity to applications
- Correlate application delivery with network performance, detect precise location of degradation along the path between the user and the application
- Test application reachability from multiple user locations across the globe
- Determine network latency and packet loss for your line of business and SaaS applications
- Determine hot spots on the network, that may be causing poor application performance
- Monitor reachability to Office 365 applications, using built-in tests for Microsoft Office 365, Dynamics 365, Skype for Business and other Microsoft services

<https://docs.microsoft.com/en-us/azure/networking/network-monitoring-overview>

<https://docs.microsoft.com/en-us/azure/azure-monitor/insights/network-performance-monitor-faq>

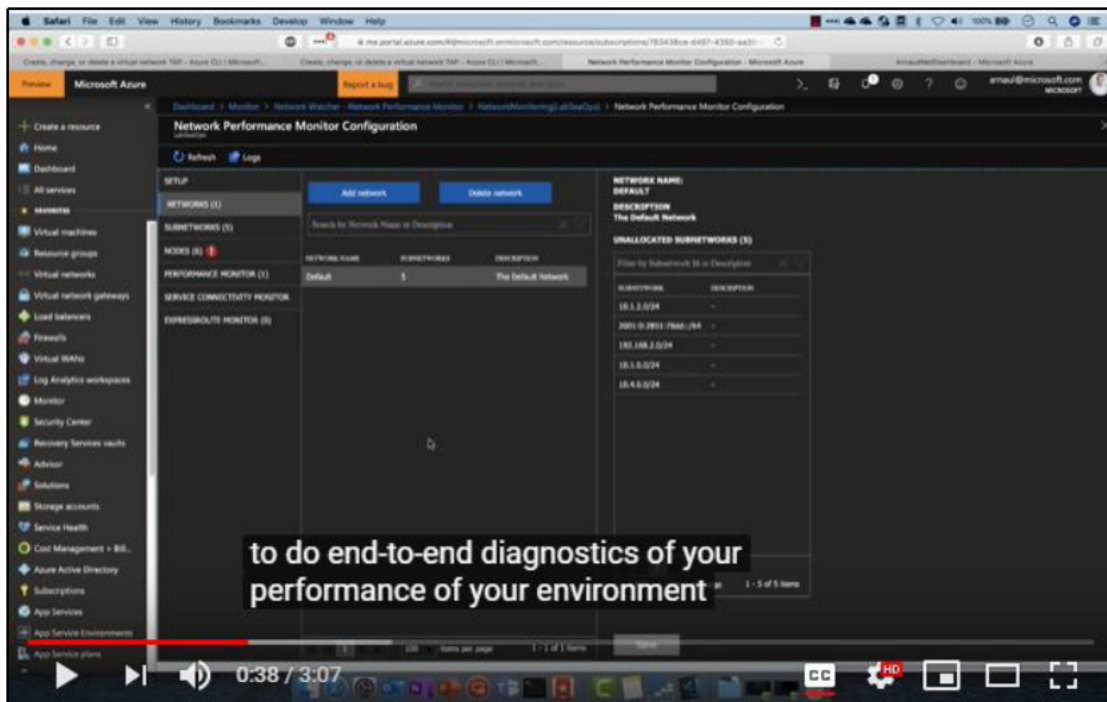
31. Azure virtual machines allow ping to a port of the machine to confirm the connectivity between the collection point and the end node. *See* <https://dreamtechprojects.wordpress.com/tag/packet-loss/>.

32. The Accused Products use synthetic transactions to monitor network performance between source and destination agents. A user can choose between TCP or ICMP as the protocol for monitoring the performance and service connectivity.

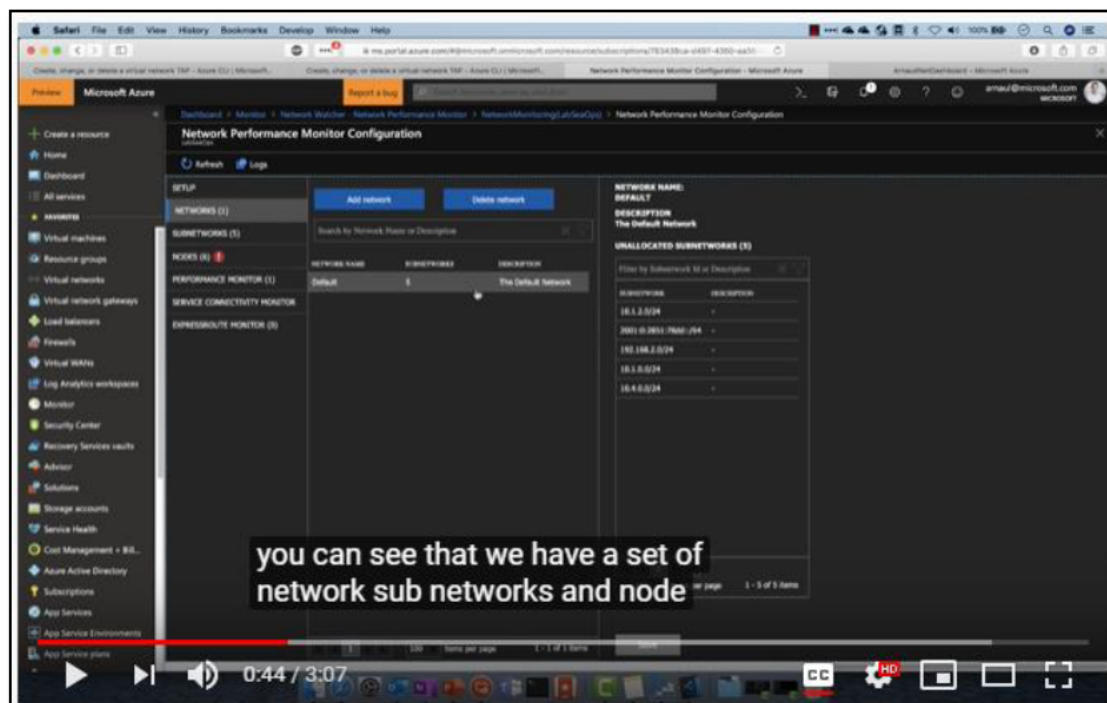
Network Performance Monitor uses synthetic transactions to monitor network performance between source and destination agents. You can choose between TCP and ICMP as the protocol for monitoring in Performance Monitor and Service Connectivity Monitor capabilities. Only TCP is available as the monitoring protocol for ExpressRoute Monitor. Make sure that the firewall allows communication between the Log Analytics agents used for monitoring on the protocol you choose.

<https://docs.microsoft.com/en-us/azure/azure-monitor/insights/network-performance-monitor>

33. Based on the data collected (using TCP or ICMP Protocol), the Accused Products measure the parameters and compute latency and packet loss rates at various points in the network, allowing users to perform end-to-end diagnostics of the performance of the environment for the network, portions of the network, and/or nodes.



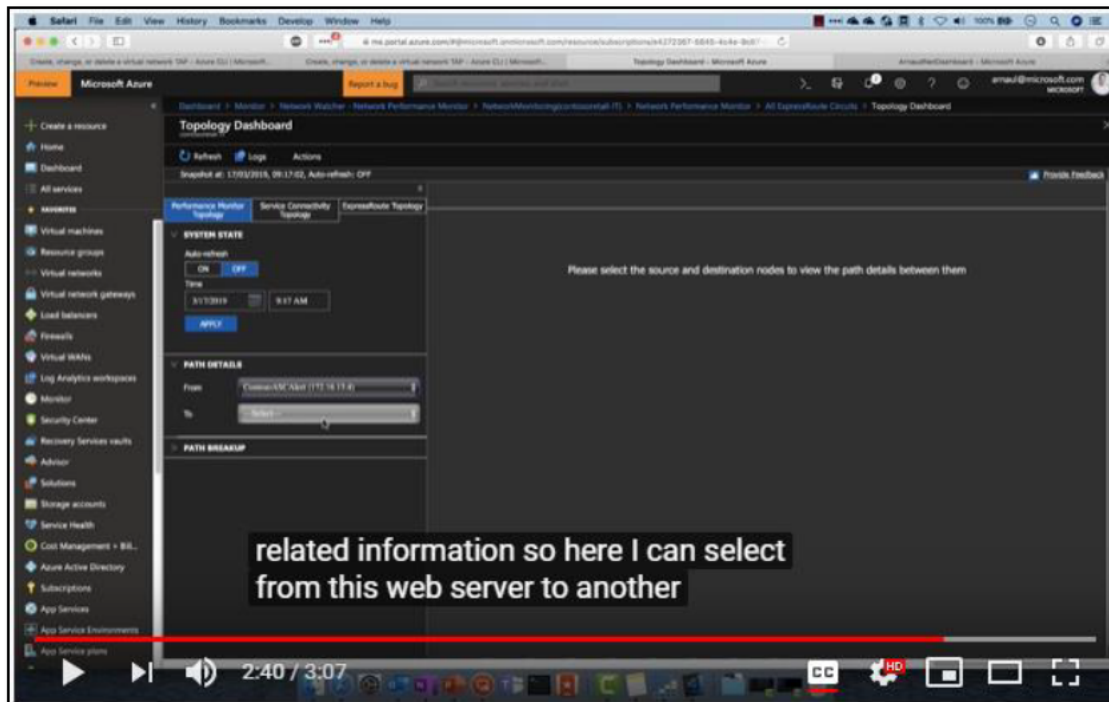
<https://www.youtube.com/watch?v=0-mJd-PTo04>, 0:38/3:07 (with closed captioning).



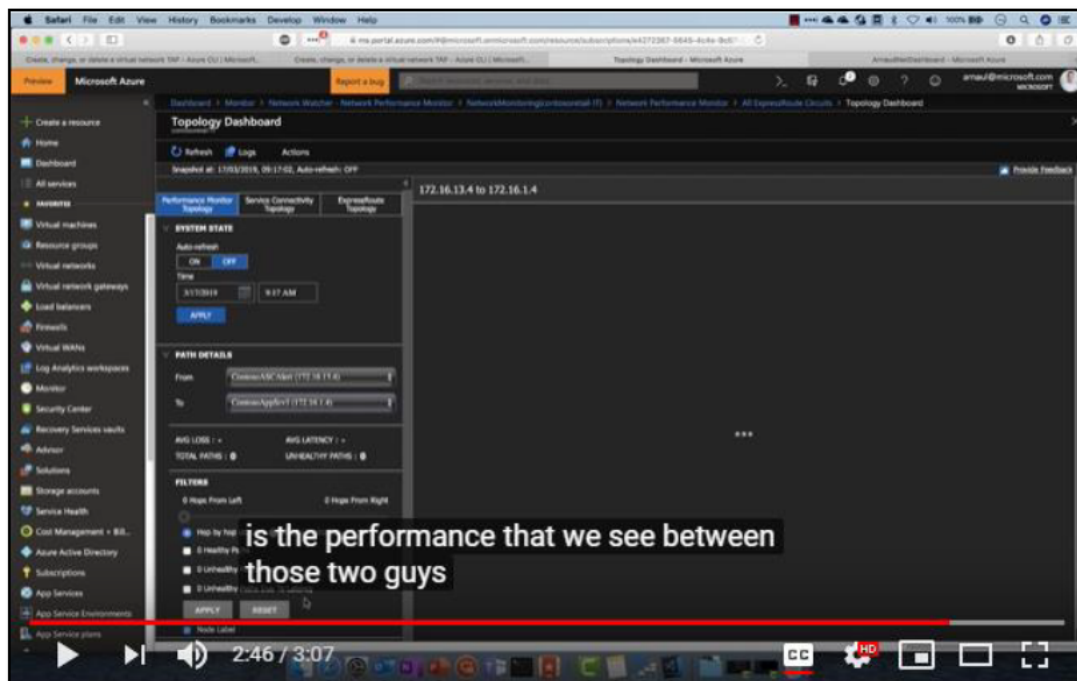
<https://www.youtube.com/watch?v=0-mJd-PTo04>, 0:44/3:07 (with closed captioning).

34. For example, an administrator can monitor network performance between two end nodes of a network. After selecting the nodes, one can obtain the packet loss rate (loss %) of the

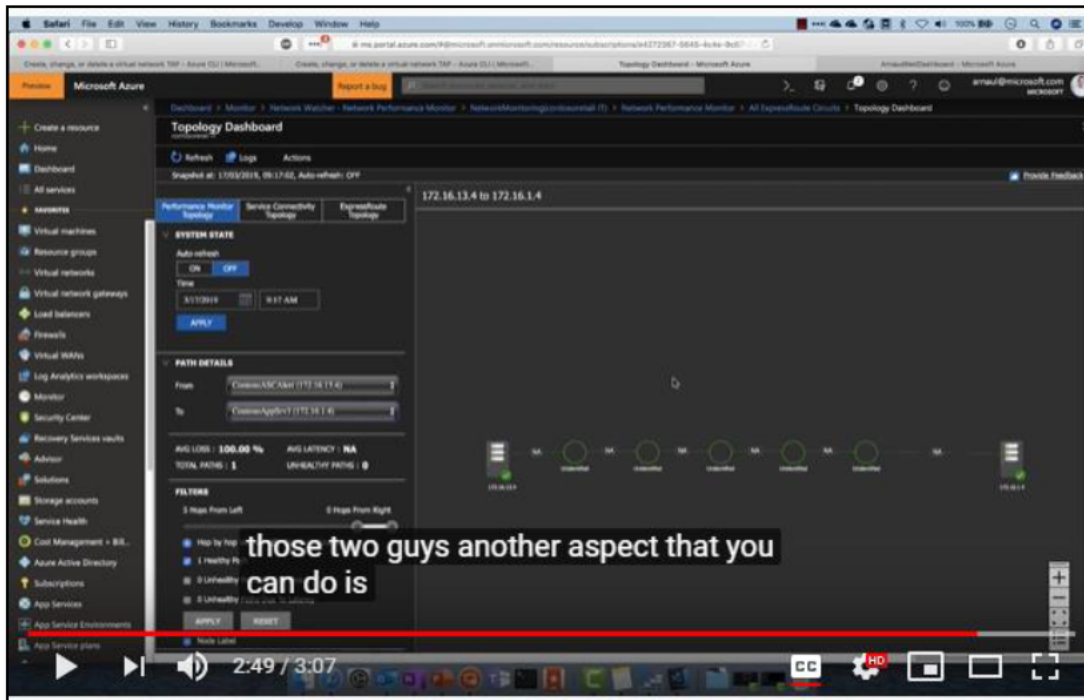
test packets and latency between the selected two end nodes, which provides an estimate of packet loss for the network.



<https://www.youtube.com/watch?v=0-mJd-PTo04>, 2:40/3:07 (with closed captioning).



<https://www.youtube.com/watch?v=0-mJd-PTo04> 2:46/3:07 (with closed captioning).



<https://www.youtube.com/watch?v=0-mJd-PT004>, 2:49/3:07 (with closed captioning).

35. In view of preceding paragraphs, each and every element of at least claim 1 of the '902 Patent is found in the Accused Products.

36. Microsoft has and continues to directly infringe at least one claim of the '902 Patent, literally or under the doctrine of equivalents, by making, using, selling, offering for sale, importing, and/or distributing the Accused Products in the United States, including within this judicial district, without the authority of Brazos.

37. Microsoft has received notice and actual or constructive knowledge of the '902 Patent since at least the date of service of this Complaint.

38. Since at least the date of service of this Complaint, through its actions, Microsoft has actively induced product makers, distributors, retailers, and/or end users of the Accused Products to infringe the '902 Patent throughout the United States, including within this judicial district, by, among other things, advertising and promoting the use of the Accused

Products in various websites, including providing and disseminating product descriptions, operating manuals, and other instructions on how to implement and configure the Accused Products. Examples of such advertising, promoting, and/or instructing include the documents at:

- <https://docs.microsoft.com/en-us/azure/guides/developer/azure-developer-guide>
- <https://docs.microsoft.com/en-us/azure/networking/network-monitoring-overview>
- <https://docs.microsoft.com/en-us/azure/azure-monitor/insights/network-performance-monitor>
- <https://docs.microsoft.com/en-us/azure/architecture/reference-architectures/hybrid-networking/hub-spoke>

39. Since at least the date of service of this Complaint, through its actions, Microsoft has contributed to the infringement of the '902 Patent by having others sell, offer for sale, or use the Accused Products throughout the United States, including within this judicial district, with knowledge that the Accused Products infringe the '902 Patent. The Accused Products are especially made or adapted for infringing the '902 Patent and have no substantial non-infringing use. For example, in view of the preceding paragraphs, the Accused Products contain functionality which is material to at least one claim of the '902 Patent.

JURY DEMAND

Brazos hereby demands a jury on all issues so triable.

REQUEST FOR RELIEF

WHEREFORE, Brazos respectfully requests that the Court:

- (A) Enter judgment that Microsoft infringes one or more claims of the '902 Patent literally and/or under the doctrine of equivalents;
- (B) Enter judgment that Microsoft has induced infringement and continues to induce infringement of one or more claims of the '902 Patent;

(C) Enter judgment that Microsoft has contributed to and continues to contribute to the infringement of one or more claims of the '902 Patent;

(D) Award Brazos damages, to be paid by Microsoft in an amount adequate to compensate Brazos for such damages, together with pre-judgment and post-judgment interest for the infringement by Microsoft of the '902 Patent through the date such judgment is entered in accordance with 35 U.S.C. § 284, and increase such award by up to three times the amount found or assessed in accordance with 35 U.S.C. § 284;

(E) Declare this case exceptional pursuant to 35 U.S.C. § 285; and

(F) Award Brazos its costs, disbursements, attorneys' fees, and such further and additional relief as is deemed appropriate by this Court.

Dated: June 2, 2020

Respectfully submitted,

/s/ James L. Etheridge

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